

# **EXHIBIT A**

**SUMMARY SHEET FOR DEFENDANTS' MEMORANDUM IN OPPOSITION TO  
TRACK ONE PLAINTIFFS' MOTION FOR PARTIAL SUMMARY  
ADJUDICATION OF THEIR EQUITABLE  
CLAIMS FOR ABATEMENT OF AN ABSOLUTE PUBLIC NUISANCE**

**Filing Name:** Defendants' Memorandum in Opposition to Track One Plaintiffs' Motion for Partial Summary Judgment Adjudication of Their Equitable Claims for Abatement of an Absolute Public Nuisance

**Filing Parties:** Defendants

**Related Docket Entries:** 1890 (Plaintiffs' Motion for Partial Summary Adjudication of Their Equitable Claims for Abatement of an Absolute Public Nuisance)

**Summary:** Plaintiffs' motion asks the Court hold as a matter of law that the opioid crisis constitutes a public nuisance in both Track One Counties; to strike Defendants' apportionment defense as it applies to their common law public nuisance claim; and to hold as a matter of law that there is a contingent joint and several abatement liability for any Defendant found liable for the opioid crisis. Plaintiffs' motion should be denied.

1. Under Ohio law and the Restatement, a public nuisance is (1) "an unreasonable interference" (2) with a "right common to the general public." In order to determine whether there has been an "unreasonable interference," the trier of fact needs to consider "[w]hether the conduct involves a significant interference with the public health." Because Plaintiffs' motion does not address evidence of Defendants' conduct, the request for a declaration that the opioid crisis is a public nuisance should be denied.

2. This request should also be denied because Plaintiffs have not proven as a matter of law that Defendants' conduct resulted in an interference with a public right.

3. Plaintiffs' request related to apportionment and joint and several liability should be denied because the more than \$7 billion dollars that Plaintiffs' seek in "abatement costs" are subject to Ohio's apportionment statute; and even if they are not, common law rules for joint and several liability and apportionment apply, which cannot be resolved at the summary judgment stage before there is a finding of liability and harm therefrom.

**Opposition Date:** July 31, 2019

**Reply Date:** August 16, 2019